

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): MICHAEL C. SERVERIAN, #133203 RANKINM, LANDSNESS, LAHDE, SERVERIAN & STOCK 96 North Third St., Suite 500 San Jose, CA 95112		TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (NAME): <u>Defendant City of Santa Clara</u> Insert name of court, judicial district or branch court, if any, and post office and street address: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA 191 N. First St. San Jose, CA 95113			
PLAINTIFF: LEE JACKSON and KENNETH JACKSON			
DEFENDANT: SILICON VALLEY ANIMAL CONTROL AUTHORITY, CITY OF SANTA CLARA, et al.			
ANSWER—Personal Injury, Property Damage, Wrongful Death <input checked="" type="checkbox"/> COMPLAINT OF (name): First Amended Complaint of Plaintiffs <input type="checkbox"/> CROSS-COMPLAINT OF (name):		CASE NUMBER: 107CV 079050	

1. This pleading, including attachments and exhibits, consists of the following number of pages: 4

DEFENDANT OR CROSS-DEFENDANT (name): CITY OF SANTA CLARA

2. ☒ Generally denies each allegation of the **unverified** complaint or cross-complaint.

3. a. ☐ DENIES each allegation of the following numbered paragraphs:

b. ☐ ADMITS each allegation of the following numbered paragraphs:

c. ☐ DENIES, ON INFORMATION AND BELIEF, each allegation of the following numbered paragraphs:

d. ☐ DENIES, BECAUSE OF LACK OF SUFFICIENT INFORMATION OR BELIEF TO ANSWER, each allegation of the following numbered paragraphs:

e. ☐ ADMITS the following allegations and generally denies all other allegations:

Jackson v. Silicon Valley Animal Control, et al.

Case No. 1-07-CV-079050

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, the First Amended Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, plaintiffs were careless and negligent in and/or about the matters referred to in said First Amended Complaint, and further that the plaintiffs failed to exercise ordinary or any care for plaintiffs' own safety and such carelessness and negligence on the part of plaintiffs proximately caused and contributed to the damage, detriment or injury sustained by plaintiffs, if any, and that plaintiffs' recovery should therefore either be barred or reduced to the extent of plaintiffs' negligence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, any harm suffered was a result of a negligent or otherwise wrongful conduct of persons other than defendant and that the conduct of the person other than defendant was the sole and proximate cause of the injuries and damages alleged by plaintiffs.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, all actions taken by defendant, including actions of DOE defendants, were undertaken in good faith and with a reasonable belief that the actions were valid, necessary, constitutionally proper and objectively reasonable for a police officer in the same circumstances, entitling defendant to qualified immunity from plaintiffs' claimed injuries and damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, plaintiffs have failed to mitigate their damages, if any.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, the reports of which plaintiffs complain were made honestly, in good faith and not maliciously in that defendant reported what their observations were and what occurred.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, defendant alleges that plaintiffs' First Amended Complaint is barred by the Doctrine of Unclean Hands.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, defendant is entitled to

1 immunity under the Eleventh Amendment.

2 AS AND FOR A NINTH AFFIRMATIVE DEFENSE, defendant contends that it is
3 immune from liability pursuant to the Federal Civil Rights Act because it was acting in good
4 faith and entertained a reasonable belief that its actions were necessary.

5 AS AND FOR A TENTH AFFIRMATIVE DEFENSE, defendant contends that it is
6 immune pursuant to the principals of qualified immunity.

7 AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE, defendant alleges that it
8 has not deprived any person, including plaintiff, of any right, privilege, or immunity
9 guaranteed by the Constitution or laws of the United States or the State of California, and,
10 therefore, defendant is not liable.

11 AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE, defendant alleges that the
12 acts or omissions set forth in the First Amended Complaint, even if proven true, constitute
13 mere negligence and were not intentional, willful or grossly negligent, and as a
14 consequence, fails to state a claim for relief.

15 AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, defendant's employees
16 were objectively reasonable in light of the facts and circumstances confronting them, and
17 their conduct did not violate clearly established statutory or Constitutional rights of which a
18 reasonable person would have known.

19 AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE, plaintiffs' special
20 damages, if any, should be reduced to the actual amount paid to plaintiffs' health care
21 providers for services reasonably related to plaintiffs' injuries, or are anticipated to be paid
22 in the future.

23 AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE, plaintiffs' claims for
24 punitive damages are barred under state and federal law.

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Case Name: Jackson v. Silicon Valley Animal Control, et al.

Case No: 1-07-CV-079050

PROOF OF SERVICE

I, the undersigned, hereby declare that I am over the age of eighteen years and not a party to the within action. My business address is 96 No. Third Street, Suite 500, San Jose, California 95112. I am employed in the County of Santa Clara where this service occurs. On the date indicated below I served a true copy of the following documents:

ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES

☒ (BY MAIL) By placing a true copy of the aforementioned documents enclosed in a sealed envelope, with postage thereon fully prepaid to be placed in the U.S. mail at San Jose, California, addressed as set forth below. I am readily familiar with my employer's practice for collection and processing correspondence for mailing with the United States Postal Service. Documents so collected and processed are place for collection and deposit with the U.S. Postal Service on the same day in the ordinary course of business, at 96 North Third Street, Suite 500, San Jose, California 95112.

☐ (BY FACSIMILE) I personally sent to the addressee's telecopier number a true copy of the above-described document(s).

☐ (BY PERSONAL SERVICE) I personally delivered a true copy of the above-described document(s) to the person and at the address as set forth below.

☐ (BY OVERNIGHT DELIVERY) A true copy of the above-described document(s) was placed in a sealed envelope, with delivery fees provided for, and delivered in the ordinary course of business to an overnight delivery carrier, addressed to the person(s) on whom it is to be served.

Stuart M. Wilson, Esq.
1671 The Alameda, Suite 300
San Jose, CA 95126

Attorney for Plaintiff
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Joseph Costella & Associates
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Attorney for Humane Society Silicon Valley
Tel: (925) 945-4491
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Mark Hazelwood, Esq.
Dirk D. Larsen, Esq.
Low, Ball & Lynch
505 Montgomery Street, 7th Fl.
San Francisco, CA 94111-2584

Attorneys for Silicon Valley Animal Control
Tel: (415) 981-6630
Fax: (415) 982-1634

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 9, 2007, at San Jose, California.

L. Hill

Lori Hill

1 JOSEPH COSTELLA & ASSOCIATES
2 JOSEPH COSTELLA, ESQ.
3 STATE BAR NUMBER 114368
4 215 Lennon Lane, Suite 200, Walnut Creek, Ca 94598
5 Post Office Box 8090, Walnut Creek, Ca 94596
6 (925) 945-4491

7 Attorneys for Defendant,
8 HUMANE SOCIETY SILICON VALLEY

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SANTA CLARA**

11 **UNLIMITED JURISDICTION**

12 LEE JACKSON and KENNETH
13 JACKSON,

Case No: 1-07-CV-079050

14 Plaintiff,

15 REQUEST FOR COPIES OF ALL
16 PRIOR PLEADINGS AND
17 DISCOVERY

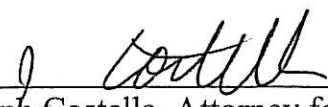
18 v.

19 SILICON VALLEY ANIMAL CONTROL
20 AUTHORITY; CITY OF SANTA CLARA;
21 CITY OF CAMPBELL HUMANE
22 SOCIETY SILICON VALLEY and DOES 1
23 TO 20,

24 Defendant.

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26 Defendant HUMANE SOCIETY SILICON VALLEY hereby demands copies of all
27 pleadings and discovery in the instant matter.

28 Dated: September 19, 2007 JOSEPH COSTELLA & ASSOCIATES


Joseph Costella, Attorney for Defendant,
HUMANE SOCIETY SILICON
VALLEY

PROOF OF SERVICE BY MAIL

The undersigned declares:

I am a citizen of the United States and am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. I am employed by Joseph Costella & Associates and my business address is 215 Lennon Lane, Suite 200, Walnut Creek, California, 94599.

On September 20, 2007, I served the attached **REQUEST FOR COPIES OF ALL PRIOR PLEADINGS AND DISCOVERY** on the parties to said action by depositing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States mail in Walnut Creek, California, addressed as follows:

Stuart M. Wilson
Attorney at Law
1671 The Alameda, Suite 300
San Jose, CA 95126
Attorney for Plaintiffs: Lee Jackson; Kenneth Jackson

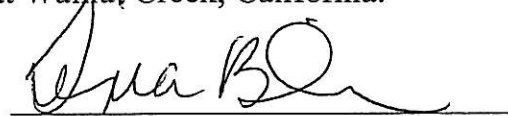
Michael C. Serverian, Esq.
Rankin, Landsness, Lahde, et al.
96 North Third Street, Suite 500
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Attorney for Defendant: City Of Santa Clara

William R. Seligmann, Esq.
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Attorney for Defendant: City Of Campbell

Mark Foster Hazelwood, Esq.
Dirk Larsen, Esq.
Low, Ball & Lynch
505 Montgomery Street, 7th Floor
San Francisco, CA 94111-2584
Attorney for Defendant: Silicon Valley Animal Control Authority

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 20, 2007, at Walnut Creek, California.



TINA BILES